

INDUCTEE RESPONDER BELIEVES PAST MENTORS WILL INSPIRE NEW FELLOWS TO CARRY ON MENTOR ROLE

Following the induction of the forty-nine new Fellows, **Robert M. Cary** of Washington, D.C. responded on their behalf.

When Washington, D.C. Chair **Bob Trout** invited me to join the Fellows, and when **Mike Smith** called and asked if I would respond to the charge, I had the same thought when both calls took place. It took me back to a time about twenty years ago in the office of one my mentors, a partner I worked for at the time, we were looking to refer a product liability case in Iowa. He pulled a book off a shelf and he said, ‘This is the directory of the American College of Trial Lawyers, it’s the roster of elite people who actually try cases. It’s a very mysterious and top secret process. I can’t describe it to you, but trust me these people really do try cases and they do so very well.’ And then he said, ‘Get this – they’re nice, every last one of them. Jerks don’t get in.’ I’ve never forgotten that.

When Bob called and when Mike called, I also thought of my father. He was a trial lawyer in Hannibal, Missouri. He actually called himself a pike lawyer because he took any kind of case that came down the pike. In addition to trials, he did wills and estates, house closings. I have one very vivid memory of him defending one of the waitresses at the Holiday Inn where we also often went to dinner, she was accused of murdering her husband. The defense was self-defense, an acquittal was obtained and ever since whenever we’d go to dinner at the restaurant there, we got extra fixings, huge plates of food, and the rump end of the roast. That was the fee he got for that case.

I lost my dad eleven years ago but I thought of him a lot this weekend. I’m sure I can confidently speak for all the new inductees that we all thought about our parents a lot this very weekend.

I knew from a very early age, about fifth grade, I was not going to be able to play professional baseball from the St. Louis Cardinals, that trials was what I wanted to do. I am very happy to be here and couldn’t be more thrilled.

UNDERSTANDING THE HORSE AND HERMIT REFERENCE

When Mike called and asked if I would do this, he worked his Southern charm and I quickly said yes. A little bit later I got a letter with the official seal of the American College of Trial Lawyers confirming that I would be responding to the charge and then it went on to read ‘from the time guests are seated for the banquet until the completion of your response food and wine will not be served.’ Talk about pressure.

It reminds me of the old English oath that’s given to bailiffs, it’s still done in Montgomery County, Maryland, I just confirmed that this weekend. I had a trial there about ten years ago and the bailiff was ordered not to give food or drink to the jury until they reached their verdict. Of course that wasn’t honored. The Maryland courts do not in fact deny food and drink from their juries but the American College of Trial Lawyers does until I’m finished so I’ll be quick.

When I got that letter I got to work. I got hold of a copy of the charge. I learned that it was written by Judge Gumpert as we just heard, the patron saint of the American College of Trial Lawyers, a great man by all accounts. When I read the charge I was struck by the words that Tom Tongue just highlighted for us about the hermit and the horse. “Truly we are the hermit and the horse,” the



words read. I immediately understood what I thought the horse thing meant. I'm from the Missouri and I thought of the St. Louis Clydesdales and I thought of the expression 'work like a horse.' But the hermit thing threw me for a little bit of a loop. What does that mean? Why do these people call themselves hermits? I thought about it a little bit, I thought about people I had known in the College and they talk about these wonderful trips they went on and meetings to London and Paris and Boca Raton and Maui, about the fine dining, and the opera, and the great lectures, the wine tasting, the golf. And I thought, 'This crowd? Hermits?'

So I went to another mentor of mine who explained the Lord Eldon reference and he said what this hermit thing means is when you're getting ready for trial, and only when you're getting ready for trial, that's when you live like a hermit. You need to cut yourself off from the rest of the world so that you're single-mindedly focused on getting ready for trial. That made sense to me. In fact it reminded me of what this very same mentor told me many times in the past. He would say, 'When we get ready for trial we live like monks.'

MANY MENTORS ALONG THE WAY

On behalf of the class of 2016 we are pleased to be celebrating with you this evening. As I think about this evening I can't help but to think of the role mentors have played in our careers. Mike Smith wisely, sagely, cautioned me not to mention names but as I stand here right now I can think in my own mind of the many, many mentors who helped me along the way. They mentored me in ways large and small.

One who took the chance of hiring me twenty-six years ago, actually introduced me to my spouse of twenty-three years. Many took the time to give me encouragement. When I needed it, some gave me gentle criticism,

and others gave me criticism that wasn't so gentle when I needed that. Others set a great example as I worked with them day after day, week after week, month after month, year after year. Some I consider mentors of sorts even though they may not even know who I am.

When I was a Federal District Court clerk I used to love to go and watch trials. I have very fond memories of sitting, taking notes, making observations of lawyers I enjoyed watching most. There were two that stood out in my mind and I learned recently that they are now both Fellows of the College.

In fact a number of lawyers I consider mentors were not Fellows of the College when they were mentoring me but now they are. I don't think that's a coincidence because something about this top secret, mysterious process that we newbies are beginning to understand this weekend must favor those lawyers who take the time to mentor younger lawyers. I know when I speak for all of us when I say we are grateful to you, for the privilege of joining you and for all of our mentors this evening.

QUIPS & QUOTES

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Robert Cary sharing what a mentor told him about the College twenty years ago

FIGHTING THE CYNICISM

There's one subject I'd like to discuss. I get to travel around the country for my work quite a bit but I make my professional home in Washington, D.C. I think ▶

it's fair to say that there is great skepticism about Washington D.C., in fact skepticism is too soft a word, anger or rage might be better words. A brand new CBS poll that just came out reveals that 60 percent of 18-24-year-olds believe Washington, D.C. embodies what is worst about America. I blame *House of Cards* for that a little bit. I blame our political culture. I think it's unfair; there are many good people who work in Washington, D.C.... But there's a reason political candidates are finding success by attacking Washington, D.C. That anger is not just directed at my professional home, Washington, D.C.; it's directed at many institutions that better our democracy. One of these institutions is the trial.

I was struck by Dean Levi's observation yesterday that law students, especially minority students, are deeply distrustful of our judicial system. In the United States, the number of cases going to trial is way down, 97 percent of criminal cases plead; more than 99 percent of civil cases settle; American business, especially, would rather litigate than settle and are opting out of the traditional trial altogether for private arbitration. On the criminal side, the evidence is compelling that even innocent people are pleading guilty to crimes they did not commit.

There may be many reasons for the decline of the trial or fewer trials: the expense of trial; the expense of discovery; the certainty of a devastating sentence in a criminal case if it's lost versus the certainty of a tolerable sentence if the plea agreement is entered into; the risk of catastrophic losses; damages in a civil case; the lack of confidence in a citizen's jury; the belief, unfair though it may be, the system is rigged; the number of times the results of trials have in fact been manifestly unjust.

Last year alone there were three exonerations a week of innocent people who have served an average of fourteen years in prison. If you ask people on the street, they believe, rightly or wrongly, that many criminals escape the consequences of their actions. The bottom line is the trial is under attack and I'm sure this is not new to the College. I don't want to diminish the accomplishments of my fellow inductees but I for one feel lucky to have gotten enough trials in this day and age to meet your admission standards.

But I worry will we be able to find qualified Fellows a few generations down the line. The same poll I just cited that found that 18-24-year-olds believe that institutional corruption is our nation's biggest problem. I think that's too cynical. One way we can fight that cynicism, I submit, is to have more trials, public trials in the sunlight. I think when that happens people will realize that trial lawyers are doing great work and

things aren't as bad as those 18-24-year-olds think it is. They'll see conscientious prosecutors enforcing the law so we can live safely and our markets work fairly. Criminal defense lawyers standing up to the government so that the government does not overreach. Plaintiffs' lawyers seeking compensation for victims of negligence and worse. Civil defense lawyers making sure that all businesses and citizens are treated fairly.

THE MENTEE BECOMES THE MENTOR

As I said I'm a proud native of Hannibal, Missouri, which happens to be Mark Twain's hometown. My mother recently sent me a 1983 volume of the *Missouri Law Review* she found among my dad's papers. My dad, like me, was not the type to read law review articles for pleasure. I was surprised that he kept it. I flipped through it and wondered what kept his interest. I found an article about Mark Twain in it. My hometown's patron saint Mark Twain, turns out wrote about eight different trials, and this article addressed his evolving attitude toward trials. Mark Twain was originally cynical about lawyers and trials but came to appreciate and learn they were a great way to seek the truth. He eventually viewed good lawyers as conscientious champions of justice. Here's what he wrote: "There is no display of human ingenuity, wit, and power, so fascinating as that by trained lawyers in the trial of an important case. Nowhere else is exhibited such subtlety, acumen, address and eloquence." That's the view of College that I've had ever since I first heard about it from my mentor's office twenty years ago. Hearing yesterday about the College's efforts to increase diversity, and hearing Linda Hirshman's fabulous talk yesterday about Justices O'Connor and Ginsburg, I'd like to end with this simple thought.

My closing thought is this: I was struck by the fact that Justices O'Connor and Ginsburg both had mentors who made a great impact on their careers. Mentors who were very different from them in age, gender and background. Justices O'Connor and Ginsburg were extraordinary people. I don't want to diminish from what they've accomplished, but I believe their roles in history were accelerated because of the roles these mentors played. If we pay back those of you who mentored us by nurturing and teaching an ever more diverse group of younger lawyers I believe that this College and the American trial will flourish long after we're gone. Simply put, I believe if there's more mentorship of a larger pool of more diverse lawyers there will be more trials and more great lawyers.

On behalf of the class of 2016 we thank you for this privilege and we look forward to our journey together. Food and drink may now be served. ■